



New Jersey Department of Children and Families Policy Manual

Manual:	NJAC	NJ Administrative Code Excerpts	Effective Date:
Title	10	Human Services	
Chapter	127	Manual Of Requirements For Residential Child Care Facilities	3/27/2009
Subchapter:	5	Staff Requirements	
Section	6	Criminal History Record Information background checks (N.J.A.C. 10:127-5.6.)	

§10:127-5.6. Criminal History Record Information background checks (a) As a condition of securing and maintaining a certificate, the facility shall ensure that a State and Federal Criminal History Record Information (CHRI) fingerprint background check, in keeping with P.L. 2003, c.186, is completed for the director and each staff member.

(b) If the director refuses to consent to or cooperate in a CHRI background check, the Division shall deny, suspend, revoke or refuse to renew the certificate, as applicable. The facility may appeal the denial, suspension, revocation or refusal to renew, as specified in N.J.A.C. 10:127-2.4.

(c) If a staff member refuses to consent to or cooperate in a CHRI background check, the facility shall immediately terminate the staff member's employment at the facility.

(d) If any person identified in (a) above has a record of criminal conviction, the Department of Human Services shall review the record with respect to the type and date of the criminal offense and make a determination as to the suitability of the person to receive a certificate or to administer or work at the facility.

(e) A person shall be disqualified from receiving a certificate or administering or working at a facility if that person ever committed a crime which resulted in a conviction for:

1. A crime against a child, including endangering the welfare of a child and child pornography pursuant to N.J.S.A. 2C:24-4, or child molestation as set forth in N.J.S.A. 2C:14-1 et seq.;

2. Abuse, abandonment or neglect of a child pursuant to N.J.S.A. 9:6-3;

3. Endangering the welfare of an incompetent person pursuant to N.J.S.A. 2C:24-7;

4. Sexual assault, criminal sexual contact or lewdness pursuant to N.J.S.A. 2C:14-2 through 14-4;

5. Murder pursuant to N.J.S.A. 2C:11-3 or manslaughter pursuant to N.J.S.A. 2C:11-4;

6. Stalking pursuant to section 1 of P.L. 1992, c.209 (N.J.S.A. 2C:12-10);

7. Kidnapping and related offenses including criminal restraint, false imprisonment, interference with custody, criminal coercion, or enticing a child into

a motor vehicle, structure, or isolated area pursuant to N.J.S.A. 2C:13-1 through 13-5 and section 1 of P.L. 1993, c.291 (N.J.S.A. 2C:13.6);

8. Arson pursuant to N.J.S.A. 2C:17-1, or causing or risking widespread injury or damage, which would constitute a crime of the second degree pursuant to N.J.S.A. 2C:17-2;

9. Aggravated assault, which would constitute a crime of the second or third degree pursuant to subsection b of N.J.S.A. 2C:12-1;

10. Robbery, which would constitute a crime of the first degree pursuant to N.J.S.A. 2C:15-1;

11. Burglary, which would constitute a crime of the second degree pursuant to N.J.S.A. 2C:18-2;

12. Domestic violence pursuant to P.L. 1991, c.261 (N.J.S.A. 2C:25-17 et seq.);

13. Terroristic threats pursuant to N.J.S.A. 2C:12-3;

14. An attempt or conspiracy to commit any of the crimes or offenses listed in (e)1 through 13 above; or

15. In any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or offenses described in (e)1 through 14 above.

(f) As an exception to (e) above, the Department may approve the employment at, or administration of, a facility by an individual convicted of a crime specified in (e) above if all of the following conditions are met:

1. The Department determines that the crime does not relate adversely to the position the individual is employed in pursuant to the provisions of P.L. 1968, c.282 (N.J.S.A. 2A:168A-1 et seq.);

2. The conviction is not related to a crime committed against a child, as specified in (e) above;

3. The facility documents that the individual's employment or administration of the facility does not create a risk to the safety or well-being of children due to the nature and requirements of the position. As necessary, the facility shall identify restrictions regarding the individual's contact with, care or supervision of children;

4. The facility documents that the individual is uniquely qualified for the position due to specific skills, qualifications, characteristics or prior employment experiences; and

5. The Department determines that the individual has affirmatively demonstrated rehabilitation, pursuant to the factors specified in (g) below.

(g) For crimes and offenses other than those cited in (e) above, an individual may be eligible to receive a certificate or to administer or work at a facility if the individual has affirmatively demonstrated to the Department clear and convincing evidence of rehabilitation.

1. In determining whether an individual has affirmatively demonstrated rehabilitation, the following factors shall be considered:

i. The nature and responsibility of the position at the facility that the convicted individual would hold, has held or currently holds, as the case may be;

ii. The nature and seriousness of the offense;

iii. The circumstances under which the offense occurred;

- iv. The date of the offense;
- v. The age of the individual when the offense was committed;
- vi. Whether the offense was an isolated or repeated incident;
- vii. Any social conditions that may have contributed to the offense; and
- viii. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the individual under their supervision.

2. Upon receipt of documentation submitted by the facility, indicating why the individual at issue should not be precluded from administering or working at the facility, the Department, after assessing the facts on a case-by-case basis, shall make the final determination regarding the individual's rehabilitation, in keeping with the provisions of the State Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq.

3. The Department shall make the final determination regarding the suitability of the director of a facility with a criminal conviction other than those cited in (e) above.

4. For a current or prospective staff member with a criminal conviction other than those cited in (e) above, the facility director or the agency's board of directors shall make a determination regarding the individual's suitability upon the Department's determination that the individual has affirmatively demonstrated rehabilitation.

(h) If the director of a facility has knowledge that any individual specified in (a) above has criminal charges pending against the individual, the director shall promptly notify the Department to determine whether or not any action concerning the individual is necessary in order to ensure the safety of the children who are placed in the facility.

(i) If the Department is notified that any individual specified in (a) above is convicted of a crime or offense after the CHRI has been completed, the Department shall make a determination whether to suspend or revoke the certificate or require the facility to terminate the individual's employment, as applicable.

(j) Upon completion of the CHRI for an individual specified in (a) above, the Department shall notify the individual, and the facility as applicable, in writing, of the individual's qualification or disqualification for employment or service under section 4 or 5 of P.L. 2003, c.186 (N.J.S.A. 30:4C-27.19 or 30:4C-27.20).

1. If the individual is disqualified, the convictions that constitute the basis for the disqualification shall be identified in the written notice to the individual.

2. The individual shall have 14 days from the date of the written notice of disqualification to challenge the accuracy of the CHRI.

3. If no challenge is filed or if the determination of the accuracy of the CHRI upholds the disqualification, the Department shall notify the facility that the individual has been disqualified.

4. The facility shall immediately terminate the disqualified individual's employment at the facility.

5. If the disqualified individual is a facility director, the Division shall deny, suspend, revoke or refuse to renew the certificate, as applicable.

(k) A facility that has received an employment application from an individual, or currently employs a director or staff member, shall be immune from liability for acting upon or disclosing information about the disqualification or termination of that individual to another facility seeking to employ that individual, if the facility has:

1. Received notice from the Department or the agency's board of directors, as applicable, that the applicant, director or staff member has been determined by the Department or the board of directors to be disqualified from employment or service at a facility pursuant to P.L. 1968, c.282 (N.J.S.A. 2A:168A-1 et seq.); or

2. Terminated the employment of a staff member because the individual was disqualified from employment or service at the facility on the basis of a conviction of a crime pursuant to P.L. 1968, c.282 (N.J.S.A. 2A:168A-1 et seq.) after commencing employment or service at the facility.

(l) A facility that acts upon or discloses information pursuant to (k) above shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the facility acted with actual malice toward the individual who is the